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Attorney's Docket No.: 06497-013001

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : James C. Liao  
Serial No. : 09/626,612  
Filed : July 27, 2000  
Title : ENGINEERING OF METABOLIC CONTROL

Art Unit : 1652  
Examiner : R. Prouty

Commissioner for Patents  
Washington, D.C. 20231

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RESPONSE TO COMMUNICATION DATED JULY 12, 2002

Responsive to the communication mailed July 12, 2002, applicant provisionally elects the following species:

- for the promoter -- *glnAp2*;
- for the heterologous polypeptide -- phosphoenolpyruvate synthase.

Applicant notes for the record that this is a provisional election. MPEP, § 803.02 sets forth the procedure to be followed when an examiner requires a provisional election of a species in a Markush claim:

In applications containing [Markush claims], the examiner may require a **provisional election** of a single species prior to examination on the merits. **The provisional election will be given effect in the event that the Markush-type claim should be found not allowable. Following election, the Markush-type claim will be examined fully with respect to the elected species and further to the extent necessary to determine patentability.** If Markush-type claim is not allowable over the prior art, examination will be limited to the Markush-type claim and claims to the elected species, with claims drawn to species patentably distinct from the elected species held withdrawn from further consideration...

(emphases added).

CERTIFICATE OF MAILING BY FIRST CLASS MAIL

I hereby certify under 37 CFR §1.8(a) that this correspondence is being deposited with the United States Postal Service as first class mail with sufficient postage on the date indicated below and is addressed to the Commissioner for Patents, Washington, D.C. 20231.

August 9, 2002  
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Cassandra Beepot  
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Accordingly Applicant's elections of particular species are merely provisional elections effective only if the Markush-type claims are found not allowable.

Please apply any charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

Date: 8-9-02

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